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2
3 STATE OF ALASKA
4 THIRD JUDICIAL DISTRICT } ss.

5 Herbert A. Viergutz, being first duly sworn upon oath, deposes and states as follows:

- 6 1. I am counsel of record for Defendant, USF&G, as regards bad faith allegations
7 contained within Plaintiff's Complaint.
- 8 2. I thoroughly reviewed the Report and Proposed Calendar of Counsel Following
9 Conference in Accordance with Court Order Dated August 11, 2005, filed by Mr.
10 Sewright on October 11, 2005, at Docket No. 414, and the Court's resulting Order
11 re: Case Status dated October 12, 2005, at Docket 415. I never even once read
12 that Report, at paragraph 3, and the resulting Court Order, to prohibit counsel for
13 any party from filing a rebuttal Expert Report in accordance with Federal Rule of
14 Civil Procedure 26(a)(2)(C).
- 15 3. Counsel for Plaintiffs cannot possibly claim prejudice regarding closure of
16 Discovery, as the undersigned provided notice of his intent to file a rebuttal Expert
17 Report from the witness disclosed on USF&G's Witness List filed the day prior,
18 pursuant to the Rules. At that early time, the undersigned also agreed to have his
19 Expert, John George, deposed on March 27, 2005, prior to the close of Discovery,
20 on March 31, 2006. That would allow counsel no less than 11 days to review the
21 rebuttal Expert Report, which will be forwarded consistent with Federal Rule of Civil
22 Procedure 26(a)(2)(C), on or before March 16, 2006. The undersigned will be
23 working daily between March 17 and March 24, contrary to assertions by Mr.
24 Sewright. Mr. Sewright would have been well advised to consider the Rules and
25 associated deadlines prior to calendaring vacation time one week prior to the close

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